IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.10044 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**YES**
2	To be referred to the Reporter or not ?	**YES**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**NO**
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	**NO**
5	Whether it is to be circulated to the civil judge ?	**NO**

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THE TETODA SEVA SAHAKARI MANDALI LTD-Petitioner(s)
Versus
THE STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :
MR PRAKASH K JANI for Petitioner(s) : 1,
MR APURVA A. DAVE, AGP for Respondent(s) : 1, 2 & 4
None for Respondent(s) : 3
MR ASHISH SHAH for MR HARIN P RAVAL for Respondent(s):5

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
Date : 22/10/2007
ORAL JUDGMENT

(1) RULE. Learned advocates appearing for the respective respondents are directed to waive service. The matter is taken up for final hearing and disposal in light of the view that the Court is inclined to adopt.

(2) The facts briefly stated are that : the petitioner-Society is situated in Village Tetoda, Taluka Deesa, Dist. Banaskantha. The petitioner was registered in 1960. The total population of Village Tetoda, as per 1991 census, is 2477. The village also has one area known as 'Ambicanagar'. It appears that respondent No.5-Ambicanagar (Tetoda) Seva Sahakari Mandali Limited sought registration. The District Panchayat Committee vide resolution No.595 dated 23.12.2002 recommended registration of Ambicanagar Society. On 24.12.2002 Ambicanagar Society was granted registration.

(3) The petitioner challenged such granting of registration by way of Appeal No.3 of 2003. On 27.06.2003 the appeal came to be dismissed forcing the petitioner-Society to take the matter further by way of Revision Application No.93 of 2003. Vide order dated 08.04.2005 the revision application was allowed and the

registration granted to Ambicanagar Society came to be cancelled.

(4) Ambicanagar Society challenged the said order made by the revisional authority by way of Special Civil Application No.9015 of 2005. Vide order dated 30.11.2006 the Court allowed the petition, without entering into any discussion on merits of the matter. As recorded in Paragraph No.4 of the order dated 30.11.2006 the revision application had been heard on 08.30.2004 and the parties were granted time to submit written submissions by 15.03.2004. The Court found, after perusal of the original file of the revisional authority, that thereafter directly on 08.04.2005 the revisional authority passed the order. The Court also found that there was overprinting qua the date of dispatch and it was in this context that the order dated 08.04.2005 was quashed and set aside and the matter was restored to file.

(5) After restoration of the revision application the impugned order dated 13.03.2007 has been made by the revisional authority. The only ground on which the revision application has been allowed is that Ambicanagar Society has been registered on 24.12.2002 and due to passage of time Ambicanagar Society having granted loans to various members, at this stage it is not possible to cancel the registration granted to Ambicanagar Society. In support of the same, reliance has been placed on a judgment of this Court in Revision Application Nos.83 of 2000 and 14 of 2000.

(6) Heard the learned advocate for the petitioner. According to him, right since inception various objections were raised by the petitioner-Society and evidence as to the total population of Village Tetoda, Ambicanagar not being a separate revenue village as well as dues of the petitioner-

Society to the extent of Rs.1.50 crores being outstanding etc. were placed before the committee as well as the District Registrar for not granting registration to Ambicanagar Society.

(7) Learned Assistant Government Pleader appearing on behalf of the respondent authorities supported the orders made by the authorities to submit that three authorities had concurred in granting the registration and hence, no interference was warranted. However, to a pointed query as to whether the legal principles laid down by this Court time and again in various judgments in light of the various circulars issued by the State Government have been borne in mind by the authorities while granting registration, the learned Assistant Government Pleader was not in a position to point out as to why the authorities have not dealt with the said aspect of the matter.

(8) Mr. Ashish H. Shah, learned advocate appearing for Mr.Harin P. Raval on behalf of Ambicanagar Society, has submitted that as no evidence has been placed by the petitioner-Society to dislodge the requirement of Ambicanagar Society being registered the authorities were not required to pass any order by dealing with the evidence. In other words, the submission was that the petitioner-Society having failed to establish that the petitioner-Society was adversely affected the orders made by the authorities granting registration to Ambicanagar Society were perfectly justified. It was further submitted that the provisions nowhere lay down any prohibition for granting registration to another society in the same village and hence, there was no error of law committed by the authorities. It was lastly submitted that, even if there was evidence placed on record by the petitioner-Society, it is deemed to have been appreciated and rejected by the

authorities when they granted registration to Ambicanagar Society.

(9) In light of the view that the Court is inclined to adopt it is not necessary to refer to the evidence in detail. Suffice it to state that there is evidence which is required to be considered by the authorities.

(10) The law is well settled and bears no repetition. Any order which is amenable to a further challenge has to contain reasons, howsoever brief, and also reflect application of mind. The order must reflect that the authority making the order was alive to the issues which were raised before the authority, the evidence pro and con to such issues, and reasons for accepting one set of evidence while discarding the other set of evidence. Unfortunately, in the present set of facts and circumstances of the case, the orders made by the authorities do not reflect that the authorities are alive to this basic

requirement while discharging their duties under the provisions of the Act. The petitioner-Society has produced various pieces of evidence. In the event such documents did not support the case of the petitioner-Society the authority was bound to assign reasons and state why the evidence is not acceptable. It may be, that on facts, the petitioner-Society may not be able to substantiate the objections raised by the petitioner-Society. However, the order has to discuss the evidence in light of the submissions made by the authorities and then record a finding which is categorical and deals with the controversy raised by one or other side.

(11) In the judgment rendered on 31.07.2007 and 01.08.2007, in Special Civil Application No.9327 of 2007, in the case of *Basna Dudh Utpadak Sahakari Mandali Ltd. Vs. The State of Gujarat & Ors*., the Court has summarized the legal position in following terms in Paragraph

Nos.9, 10, 11 and 12:

"9 Section 4 of the Act has come up for consideration time and again before this Court but in none of the decisions this Court has been able to lay down any formula for the purpose of recording decision as to in which circumstances the existing society can be considered to be adversely affected. In fact, in the decision in case of *Vachhol Dudh Utpadak Sahakari Mandali Limited* (supra) this Court has stated :

"16.1 It is neither possible nor permissible to lay down a straight jacket formulate to be applied with mathematical exactitude to apply in all cases. There are different kinds of situations, different kinds of societies and there are different fields in which such cooperative societies operate. All circumstances which emerge or which may emerge are impossible to be foreseen and no straight jacket formulae can be provided for whereby discretion of the authority is taken away completely".

10 Thus each case has to be examined in light of the factual matrix and the evidence available on record. Circular dated 18/21-07-2003 specifically deals with the subject matter of guidelines for the purpose of registering the same category of a society in one village. In first paragraph

the circular states that it is not proper and advisable to register a society having the same objects as an existing society in the same village, more particularly in case of societies similarly situated in sectors like collection of milk, labour etc. The reasons for such an embargo are : [i] This is against the interest of co-operative movement; [ii] It is likely to result in unhealthy competition; [iii] As a consequence the existing societies of the area are likely to suffer and; [iv] There is bound to be groupism, internal disputes and generation of litigation. It is therefore laid down in the circular that in the same village more than one societies belonging to the same category and having same objects should not be registered. Before exercising the discretion the registering authority is required to carefully consider whether the proposed society is for benefit of the members, is proposed for protecting the financial interests of the members. The registering authority is further required to ensure that the proposed society is not being established for achieving the nefarious objects of vested interests or for personal gains of traders.

11 In the case of *Nandotra Dudh Utpadak Sahakari Mandali Ltd. AIR 2004 (Guj.) 253* this Court has while dealing with the

Proviso u/s. 4 of the Act come to the conclusion that the quantum of profits need not be the only relevant guideline or yardstick because the adverse effect may be of various types including that of unfair competition. In the said decision the Court has taken into consideration the extent of investment made by the existing society, the population of the village and such other factors as being relevant factors on the basis of which the registering authority is required to exercise discretion whether to grant registration or not.

12 In the case of *Vachhol Dudh Utpadak Sahakari Mandali Limited* (supra) this Court has held that the Registrar has to not only satisfy himself about the society complying with the provisions of the Act and Rules for registration, and that the bye-laws are not contrary to the Act and Rules, but has also to consider as to whether new society is being proposed only for the purpose of swelling the number of voting members considering the fact that the primary level societies are voter members in relation to elections of various district level federal societies."

(12) If the aforesaid principles are applied to the orders made by the authorities in the present

case it become more than abundantly clear that the authorities have neither applied the settled legal position nor dealt with the evidence on record. In fact the orders made by the authorities are virtually non-speaking orders and whatsoever reasons are stated in the orders can, at the best, be termed as apology for reasons.

(13) In the aforesaid facts and circumstances of the case, the orders made by the appellate authority and the revisional authority stand cancelled and the registration granted to Ambicanagar Society is also cancelled restoring the matter to the file of the District Registrar, who shall pass a fresh order after considering the submissions of both the sides and after considering the evidence that has already come on record and the further evidence that the parties may tender.

(14) The petition is allowed accordingly in the

aforesaid terms. Rule made absolute. There shall be no order as to costs.

(15) At this stage the learned advocate for the respondent No.5-Ambicanagar Society makes a request to suspend the operation of this judgment. In light of the fact that the proposed society is to be heard afresh by the authority the request for staying operation of this judgment is rejected.

Sd/-
[D.A. MEHTA, J]

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Bhavesh*